IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8971 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHARATKUMAR NATVARLAL MODI

Versus

DIVISIONAL CONTROLLER

Appearance:

1. Special Civil Application No. 8971 of 1995

MR KV GADHIA for Petitioner No. 1

MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/04/2002

ORAL JUDGEMENT

#. Heard Mr.K.V.Gadhiya, learned advocate appearing on behalf of the petitioner and Ms.Krina C. Thakkar, learned advocate for Mr.Y.S.Lakhani, on behalf of the respondent Corporation.

#. In the present petition, the petitioner workman has challenged the award passed by the Labour Court, Rajkot in Reference No.772/90 dated 10th March, 1995, wherein the labour court has set aside the dismissal order and granted reinstated with continuity of service without backwages of interim period. This Court has issued RULE returnable on 15th November, 1995 by order dated 18th October, 1995.

#. Learned advocate Mr.Gadhiya on behalf of the petitioner workman has submitted that the labour court has committed gross error while denying backwages of the interim period taking into account the fact that past record is bad. However, he submitted that past record has been produced by the petitioner workman along with present petition, wherein it reflects that prior to this incident, only one incident for which punishment of stoppage of two increments without cumulative effect was imposed. Therefore, except this, there was no other bad past record. Mr.Gadhia, learned advocate submits that therefore denial of total backwages by the labour court amounts to imposition of harsh punishment on the petitioner workman and thus, the labour court has committed gross error in not granting backwages of interim period.

#. Ms.Krina Thakkar, learned advocate for respondent Corporation has submitted that misconduct which is serious in nature, was found to have proved against the petitioner workman and this aspect has been taken into account by the labour court and granted reinstatement with continuity of service and denied the backwages by way of penalty to the petitioner workman. She also submits that the labour court has jurisdiction under Section 11-A of the Industrial Disputes Act to impose such punishment and therefore, the labour court has not committed any error which in any way requires interference of this Court while exercising the jurisdiction under Article 226 and 227 of the Constitution of India.

#. I have considered submissions of the learned advocates for the parties. Before the Labour Court, the petitioner workman failed statement of claim vide Exh.4 and written statement was filed by the Corporation vide Exh.7. Thereafter, the respondent Corporation has produced certain documents vide Exh.8 and then the petitioner was examined at Exh.24. No oral evidence led by the respondent Corporation. The labour court has after considering the evidence on record, come to the conclusion that the departmental inquiry which was

conducted by the Corporation is legal and valid and finding recorded by the inquiry officer is also held to be legal and valid and therefore, misconduct committed by the petitioner workman is found to have proved. Thereafter, the labour court has considered that for very misconduct, criminal prosecution was lodged against the petitioner workman, wherein he was exonerated and declared acquitted. Considering this fact, the labour court has come to the conclusion that taking into account the gravity of misconduct which is found to have proved before the labour court, if backwages of interim period are denied to the petitioner workman towards penalty, would meet the ends of justice. The misconduct which has been committed by the petitioner workman that at the time of checking of the bus, some intoxicating substance / liquid was being transported. However, this allegation has been denied by the petitioner but in inquiry, it was found that misconduct committed by the petitioner workman. Therefore, considering the fact of acquittal granted by the competent Court of Law and the departmental inquiry proceedings, the labour court Court has granted reinstatement with continuity of service in favour of the workman without backwages of the interim period towards penalty.

#. It is observed that while exercising the powers under Section 11-A of the Industrial Disputes Act, 1947 and when the labour court is satisfied that the dismissal or termination unjustified or harsh, then the labour court may pass appropriate orders and impose some conditions against the delinquent workman. This aspect has been examined by this Apex Court in case of JITENDRA SINGH V. SHRI BAIDYANATH AYURVED BHAWAN LTD. reported in AIR 1984 SC 976. The relevant observations made in para-3 & 4 are relevant with the facts of this case and therefore, same are reproduced as under :-

"3. Wide discretion is vested in the Tribunal under this provision and in a given case on the facts established the Tribunal can vacate the order of dismissal or discharge and give suitable directions. It is a well settled principle of law that when an order of termination of service is found to be bad and reinstatement is directed, the wronged workman is ordinarily entitled to full backwages unless for any particular reasons the whole or a part of it is asked to be withheld. The Tribunal while directing reinstatement and keeping the delinquency in view could withhold payment of a part or the whole of the back wages. In our opinion, the High Court

was right in taking the view that when payment of back wages either in full or part is withheld it amounts to a penalty. Withholding of back wages to the extent of half in the facts of the case was, therefore, by way of penalty referable to proved misconduct and that situation could not have been answered by the High Court by saying that the relief of reinstatement was being granted on terms of withholding of half of the back wages and, therefore, did not constitute penalty.

4. Under S.11A of the Act, advisedly wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Article 227 of the Constitution does not enjoy such power though as a superior court, it is vested with the right of superintendence. The High Court is undisputedly entitled to scrutinise the orders of the subordinate tribunals within the well accepted limitations, and therefore, it could in an appropriate case, quash the award of the Tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. The High Court is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the Tribunal as in the case of an appeal where it lies to it. In this case, the Tribunal had directed reinstatement, the High Court vacated the direction of reinstatement and computed compensation of Rupees 15,000/- in lieu of restoration of service. We are not impressed by the reasoning of the High Court that reinstatement was not justified when the tribunal in exercise of its wide discretion given under the law found that such relief would meet the ends of justice. The Tribunal had not recorded a finding that there was loss of confidence of the employer. The job of a librarian does not involve the necessity of enjoyment of any special confidence of the employer. At any rate, the High Court too did not record a finding to that effect. Again, there is no indication in the judgment of the High Court as to how many years of service the appellant had put in any how many years of service were still left under the Standing Orders. The salary and other service benefits which the appellant was receiving also did not enter into the consideration of the High

> Court while computing the compensation. We are, therefore, of the view that the High Court had no justification to interfere with the direction regarding reinstatement to service and in proceeding to substitute the direction by quantifying compensation of Rupees 15,000/- it acted without any legitimate basis."

#. In view of above observations of the Apex Court, the Labour Court is empowered to deny backwages by way of penalty once the labour court is satisfied that the dismissal order is unjust and disproportionate. Therefore, considering on the facts and in the circumstances of the case, it seems that the labour court has rightly exercised the powers while denying the backwages towards penalty to the petitioner workman on the basis of the serious misconduct which is found to have proved. Therefore, according to my opinion, the labour court has not committed any error while passing impugned award. There is no jurisdictional error nor any procedural irregularity committed by the labour court which in any way requires interference by this Court while exercising the powers under Article 226 and 227 of the Constitution. Hence, there is no substance in this petition and same is rejected accordingly. Rule discharged. No order as to costs.

Date : 24-4-2002 [H.K.Rathod, J.]

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